

July 19, 2023

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4
5 *In Re* FLINT WATER CASES Case No. 16-10444
6

7 _____/
8 STATUS CONFERENCE

9
10 BEFORE THE HONORABLE JUDITH E. LEVY
11 UNITED STATES DISTRICT JUDGE

12 JULY 19, 2023

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(None)

EXHIBITS

(None)

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P R O C E E D I N G S

THE CLERK: Calling the Flint Water Cases.

THE COURT: Great. And I think Jeseca has all of the appearances on the record, so we can dispense with that.

And this is the time we set aside for a status conference in the ongoing Flint water litigation. And I have an agenda of four items.

And the first was Veolia's request to address the Court regarding the outstanding Bellwether III home inspections. And at our conference on June 13, I think at that time I learned that there were still two homes where two of the Bellwether III plaintiffs had resided for several years. And VNA had made some efforts to gain access to those homes for four-hour or longer than four-hour inspections.

And then in July 19, we had agreed that today would be the day that we'd tried to invite the individuals who live in those homes to discuss what their objection is and what they need to know about the process.

And I think, Mr. Olsen, you were going to subpoena them to be present.

MR. OLSEN: Yes, Your Honor. I'll just give you a brief update.

THE COURT: Brief.

MR. OLSEN: As you just noted, we set this today to try to encourage cooperation for these home inspections. We

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1 similarly had some difficulty serving them in person. They
2 were avoiding that service. But we did serve them at their
3 last and usual place of abode.

4 The good news is, one of the two homeowners did reach
5 out to us and suggested they were willing to do the home
6 inspection. And we're coordinating with them to accomplish
7 that.

8 And what I would suggest, Your Honor, unless the
9 other homeowner, Montaria Brown [sp], has joined us, which I
10 suspect she hasn't, that we table this issue. We will
11 continue our efforts.

12 But given the Court's comments last time and the
13 hesitancy to do anything more strident, I would suggest we
14 just leave this where it is. We will continue our efforts.
15 And if we think we need to schedule something in the future to
16 get the Court's assistance, I would let you know.

17 THE COURT: Okay. And I'm looking now at the list of
18 attendees who are not on the screen. And I don't see Montaria
19 Brown, but I want to just look one more time. And I don't see
20 any telephone numbers or anything like that or unusual names
21 for who people might be. We see that sometimes. Cartoon
22 characters and things of that nature. But I don't see that
23 today.

24 So I think that's a good approach and I'm glad that
25 you were able to meet with some success with at least one of

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1 the individuals.

2 And so we'll just -- you'll continue to work on that.
3 And if you need my assistance, please let me know.

4 MR. OLSEN: Okay, Your Honor.

5 THE COURT: So next we have an ongoing issue that
6 we've all become a little bit familiar with. Veolia has a
7 request to address the production of the MATLAB source code.

8 So what's going on there?

9 MR. OLSEN: As you well know, we received a copy of
10 the code that we did not think was readable. You gave
11 plaintiffs two options. Either delivery a copy of that code
12 to your clerk who had some experience with MATLAB, or
13 coordinate a call between the two experts.

14 Mr. Stern thought that coordinating a call with the
15 two experts was the right way to go. We had that call on June
16 28. I think that call was productive. Dr. Specht confirmed
17 that he had the unencrypted MATLAB code. He could produce it.
18 He had previously produced a one-time file that could perform
19 the calculations but wouldn't show how those calculations were
20 performed.

21 Now despite that call on the 28th and the indication
22 that we could get a unencrypted readable source code,
23 plaintiffs' counsel has not yet or Dr. Specht has not yet
24 produced that code. They have suggested that Dr. Specht isn't
25 available for deposition now until September. And they are

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1 taking the position that they want to produce the code shortly
2 before his deposition because they think we shouldn't have a
3 lot of time in advance of the deposition with the code.

4 Our view obviously is the Court originally compelled
5 plaintiffs to prove this code on March 8, more than four
6 months ago. We negotiated a protective order that said as
7 soon as we executed it we would get the code.

8 We don't see any reason or any basis to withhold the
9 code now. In fact, once we get the code, we'll also need to
10 verify whether Dr. Specht has provided sufficient raw data
11 from his measurements to run the code and replicate those
12 results. So there could be follow-up back and forth even
13 after we get the code.

14 So we don't know why we don't have the code. We
15 think we should get the code immediately.

16 THE COURT: So tell me a little bit more about the
17 conversation between your expert and Dr. Specht.

18 MR. OLSEN: I wasn't on the call. But and
19 Mr. Ter Molen can correct me if I'm wrong. But my
20 understanding is that Dr. Hubert and Dr. Specht talked and
21 Dr. Specht suggested that, yes, that we did not get a copy of
22 the code to the extent we were looking for a copy of the code
23 to replicate all of his calculations. And he could provide an
24 unencrypted copy of the source code that would enable us to do
25 that.

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1 THE COURT: Okay. So Mr. Stern or Ms. Daly, would
2 you like to respond?

3 MS. DALY: Yes, Your Honor. I'll respond. So first,
4 I just want to give a little bit more light on the call
5 between Dr. Hubert and Dr. Specht because Mr. Ter Molen and
6 myself had the opportunity to be on that call. And the call
7 was very productive, as Mr. Olsen said. However, it didn't go
8 exactly as he summarized.

9 Dr. Hubert was very helpful and he explained to
10 Dr. Specht and all of us that the initial protective order and
11 the agreement, which the attorneys had drafted and the Court
12 entered, did not specify what it was that he exactly needed,
13 which he explained was -- and I don't -- I can't explain what
14 this means, but a source code.

15 So he explained that what Dr. Specht initially sent,
16 he was not able to open. He was not able to use. And then he
17 said what he needs is the source code. And then he went on to
18 elaborate for Dr. Specht's benefit and all of our benefits
19 what that meant to him, what that would look like. So it was
20 very helpful. We learned a lot.

21 Dr. Specht agreed that he could edit or for lack of a
22 better word tinker with the format that he initially sent to
23 best meet what Dr. Hubert explained he needed. And we have no
24 problem with Dr. Specht producing that.

25 I think that really this is a misunderstanding that

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1 happened between lawyers drafting the agreement of what would
2 be exchanged versus experts who understand the technical
3 terms.

4 So that's the summary of what happened.

5 And then as to the deadlines, our position is not
6 that we want to delay or that the code should be produced only
7 a few days before the deposition.

8 Dr. Specht, since all of this has transpired, he has
9 some family events, some travel coming up in the summer. Some
10 happy things. He's getting married. And traveling to Asia.
11 And I think his partner is from another part of the country.
12 So there's a lot of travel involved. All that to say he won't
13 be available for a deposition until September -- mid
14 September. September 25.

15 And we just want to keep the integrity of the initial
16 intervals contemplated by the scheduling order initially
17 submitted by the Court and the scheduling order which the
18 parties agreed to, specifically the May 25 scheduling order.
19 So we just don't think that it's fair for there to be an
20 extended interval of time between when the code and the
21 reports are produced, and when the deposition of Dr. Specht is
22 held, and then the following responsive defense expert
23 reports.

24 THE COURT: Let me just interrupt and ask you what is
25 your plan right now for when you would turn over the source

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1 code and the underlying data?

2 MS. DALY: Yes, Your Honor. We had sent the defense
3 counsel a proposed joint stipulation which contemplates that
4 we would submit the code September 15. And then Dr. Specht
5 would be deposed between September 25 and the 29th. And then
6 the defendants, you know, corresponding expert report would be
7 due October 9.

8 And that's -- that is keeping true to the 10 to
9 15-day intervals that we had all initially agreed to.

10 And I just would like to say one more thing. In the
11 context of this, we have agreed to several deadline extensions
12 for the defense expert reports responding to our experts of
13 Dr. Hoffman, Dr. Krishnan. We submitted to the defendants
14 those reports in February.

15 And our experts, our Group A experts, which again is
16 Dr. Krishnan, Dr. Hoffman, Dr. Russell, they've all been
17 deposed. And since then we've been agreed to several 30-day
18 extensions, which we've had no problem with in the spirit of
19 good faith and also in light of the Court's comments that the
20 trial will be a little bit later than expected.

21 But as a result, the defense experts have really had
22 the advantage of having our expert reports and having their
23 depositions for much longer than was initially contemplated by
24 the scheduling order submitted by the Court.

25 So really our concern here is just to keep the

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1 playing field level and not extrapolate on that advantage,
2 which the defense experts have already had. And then to the
3 extent that --

4 THE COURT: Tell me again, what is the origin of the
5 10 today -- 10 to 15-day lead time?

6 MS. DALY: It was agreed to in a joint stipulation
7 that was entered on May 25. It's docket number --

8 THE COURT: Of this year?

9 MS. DALY: -- 2479.

10 THE COURT: Okay. Docket number what?

11 MS. DALY: 2479.

12 THE COURT: Okay. So what's wrong with that,
13 Mr. Olsen?

14 MR. OLSEN: It doesn't make any sense.

15 THE COURT: Is it in that docket? I have to log on
16 to the docket. I usually get -- I'm almost there.

17 MS. DALY: In that docket, we had the June 1 deadline
18 for submitting the code. And then a following window for a
19 deposition that was June 12 to June 16. And then the defense
20 corresponding expert report following that June 26.

21 THE COURT: That's what I'm seeing as well. So
22 what's wrong with that?

23 MR. OLSEN: The reason those deadlines were set the
24 way those were set is we extended the deadlines to give us a
25 minimum amount of time to review the code because the code

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1 hadn't been produced.

2 It wasn't because there's some integrity issue with
3 respect timing between preparation and review of the code and
4 the expert depositions. The code was ordered to be produced
5 months ago. They have the code. In fact, they produced what
6 they called was a readable source code that wasn't.

7 THE COURT: I understand.

8 MR. OLSEN: The notion that we need to wait until a
9 couple weeks before the deposition to get the code, which is
10 supposed to have been produced four months ago and just wasn't
11 doesn't make any sense. And we may have follow-up requests.
12 And we've seen how this has gone with respect to trying to get
13 relevant data.

14 To just say because we thought there was a minimum of
15 two weeks to read the code before means we shouldn't get the
16 code until two weeks before the dep doesn't make sense.

17 THE COURT: Okay. So what I'll do is ask Ms. Daly to
18 provide the code by September 5, the day after Labor Day. And
19 that gives you about a month. So Mr. -- Dr. Specht can take
20 care of his wedding and his family and get this to you all by
21 September 5, giving you just about a month.

22 So now we have the next item on the agenda, which is
23 Veolia's request to discuss the post January 2017 document
24 production and the materials Veolia, oh, has designated as
25 privileged. Is --

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1 MR. OLSEN: Your Honor, I think this issue got
2 resolved in a meet and confer yesterday. So we can skip this
3 one.

4 THE COURT: I'm thrilled to hear that. Okay.

5 So now let's look at the last item on our agenda,
6 which is issues related to plaintiffs' fourth amended request
7 for production as discussed at the May 17 conference.

8 And what I wanted to do -- I sent an email yesterday
9 that I wanted to start this agenda item by addressing the 60
10 documents that had been provided to me from among the 1,700
11 documents that Veolia had said or said were privileged. So
12 why don't we begin there.

13 And so as everyone is aware, this is a dispute
14 between the individual plaintiffs' counsel, Corey Stern and
15 Melanie Daly, in this particular dispute, who were challenging
16 the privilege designations on those 1,700 documents that would
17 otherwise be responsive to plaintiffs' request for production
18 of documents.

19 So I asked to see 60 sample documents. Thirty
20 selected by the plaintiffs, who, of course, had no idea what
21 were in the documents but they have the descriptions on a
22 privilege log. And 30 selected by VNA.

23 Overall, as you know, the plaintiffs are challenging
24 the privilege designations on most of these documents because
25 they were provided to employees at two different public

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1 relations firms. One of which I'm just going to refer to as
2 Rasky. It has a more complicated corporate name. And the
3 other I'll refer to as Mercury.

4 And with respect to the attorney-client privilege
5 assertion, plaintiffs generally argued that VNA had waived the
6 privilege when they provided these documents to employees at
7 one or more of these PR firms.

8 And with respect to the attorney-client work product
9 -- or the attorney work product privilege, plaintiffs argued
10 that the documents are likely not privileged in the first
11 place because their primary purpose or driving force -- and
12 that comes from case law -- behind their creation was a media
13 campaign and that they were not, in fact, created or related
14 to obtaining legal advice or created to -- in anticipation of
15 litigation or because of litigation for the attorney work
16 product privilege to apply. And of course, VNA submitted and
17 filed a letter brief indicating that all of the documents are
18 privileged.

19 So I want to first invite plaintiffs to file your
20 letter brief on the docket just so that the full briefing is
21 there. So that will be your choice, but I invite you to do
22 that.

23 And in order to make a decision and sort this out, I
24 look to the law of the state where the litigation is taking
25 place at the outset. And here Michigan courts have not had

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1 many opportunities to weigh in on whether the privilege is
2 waived when a client voluntarily shares otherwise
3 attorney-client privileged documents and/or work product
4 information with a third party PR firm. And neither has the
5 Sixth Circuit had an opportunity to look at this in detail.

6 But that does not mean we're without guiding
7 principles. Because these are well established privileges and
8 have been addressed by courts all over the country.

9 So I want to start by lying at the attorney-client
10 privilege assertion. And here the Reed Dairy Farm v Consumers
11 Power Company, this is a Michigan Court of Appeals case from
12 1998, they set forth the scope of the attorney-client
13 privilege in Michigan as follows.

14 The attorney-client privilege attaches to direct
15 communications between a client and his attorney as well as
16 communications made through their respective agents. The
17 scope of the attorney-client privilege is narrow, attaching
18 only to confidential communications by the client to his
19 advisor that are made for the purpose of obtaining legal
20 advice.

21 Where an attorney's client is an organization, which
22 is what we have here, the privilege extends to those
23 communications between attorneys and all agents or employees
24 of the organization authorized to speak on behalf of -- on its
25 behalf in relation to the subject matter of the communication.

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1 So we know in Michigan the key case on how a court
2 should look at this in a company setting such as the one here
3 comes from the Leibel v General Motors Michigan Court of
4 Appeals case in 2002. And Leibel is L-e-i-b-e-l.

5 And Michigan follows the case we all look to, the
6 Upjohn Supreme Court case to articulate viable principles
7 underlying the rule, such as the purpose is to encourage full
8 and frank communication between attorneys and clients and
9 thereby promote broader public interest, the broader public
10 interest of observance of the law and administration of
11 justice, and that sound legal advice or advocacy serves the
12 public need that such advice and that it relies upon the
13 lawyer being fully informed by the client.

14 We're reminded that waiver of privilege can present a
15 mixed question of law and fact. And when analyzing whether a
16 waiver has occurred, the Leibel court instructs that, first,
17 the privilege is personal to the client and, therefore, only
18 the client can waive it. And second, the privilege does not
19 arise by accident.

20 And Michigan follows a true waiver requirement where,
21 quote, unquote, "true waiver" is defined as an intentional
22 voluntary act which cannot arise by implication. However, an
23 error of judgment where the person knows that privileged
24 information is being released but concludes that the privilege
25 will never less -- nevertheless survive will still destroy any

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1 privilege.

2 Once otherwise privileged information is disclosed to
3 a third party, or if an otherwise confidential communication
4 is necessarily intended to be disclosed to a third party, the
5 privilege is gone.

6 So those are the general principles that I am
7 applying on the attorney-client privilege.

8 Looking to the work product privilege here, any
9 notes, working papers, memoranda, similar materials prepared
10 by an attorney in anticipation of litigation are protected
11 from discovery. And that still comes from the Leibel case.

12 And similar to Federal Rule of Civil Procedure 26
13 (b) (3), Michigan Court Rule 2.302(B) (3) (a) provides nearly
14 identical protections. So Michigan courts generally find that
15 it's appropriate to rely on federal cases for guidance in
16 determining the scope of the work product document -- or work
17 product doctrine. Let me grab a couple -- one of those cases.
18 Just a minute.

19 So this has been an interesting process to sort
20 through. You can see that I have a lot here. There we go.
21 He the primary -- when I look at the work product privilege,
22 what I'm looking at is what is the primary purpose? What is
23 the driving force for the creation of the document or the
24 communication? Does it relate to a legal strategy? Or in our
25 case, plaintiffs suggest that the appropriate question is,

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1 does it relate to a media strategy?

2 If it's the latter, the document was never attorney
3 work product in the first place, if it was created to further
4 a media strategy and not a legal strategy even if lawyers are
5 copied on the email or sent the email in the first instance.
6 And even if the subject line of the email says attorney work
7 product seeking legal advice in anticipation of litigation,
8 none of that matters. What matters is what is the driving
9 force for the creation of the document.

10 So VNA has urged in your letter brief that I should
11 look to the case *In re Copper Market Antitrust Litigation* out
12 of the Southern District of New York for some direction. And
13 that's with an excellent reason. That case shares some of the
14 facts that are in common with our case.

15 There the Sumitomo Corporation was facing a scandal
16 of sorts after one of its division heads disclosed certain
17 things during a government investigation. He then hired a PR
18 firm to handle the public relations consequences because the
19 Sumitomo Corporation was located in Japan and they wanted
20 media advice regarding western markets.

21 And ultimately the judge in that case ruled that the
22 communications that took place with the PR firm that related
23 to the litigation or were prepared in anticipation of
24 litigation were, in fact, protected by attorney-client
25 privilege and work product. This was because the court

1 determined that the PR firm was essentially acting as an
2 employee of the party and, therefore, was within the group
3 that would be considered the client seeking legal advice or
4 that was in need of legal work product type documents.

5 But there's an important difference between that case
6 and our case. In the In re Copper case, there was evidence
7 that the PR consultant was what was called the functional
8 equivalent of the client's employee.

9 For example, he was hired to consult intimately on a
10 commercial and retail development project before the
11 litigation was filed. He was involved on a daily basis with
12 the client and would be the sole client representation at
13 meetings with potential tenants and with local officials.

14 There was no one else from the Sumitomo Corporation
15 present at that meeting -- at those meetings other than
16 someone from the PR firm.

17 In addition, it was determined by the court that he
18 possessed information that no one else at the company held.
19 And the court also held that there was no principle basis to
20 distinguish the consultant's role from that of an employee of
21 the client that was seeking legal advice.

22 Finally, the court found that the PR consultant was
23 the type of person with whom a lawyer would wish to confer
24 confidentially with in order to understand the reasons for
25 seeking representation and how that representation would

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1 develop.

2 VNA also pointed me to the case Grand Canyon Skywalk
3 Development LLC v Cieslak, C-i-e-s-k-l-a-k [sic] for the
4 rationale behind considering a public relations firm as a
5 functional employee or critical part of a legal strategy team.

6 And here I think VNA argued in your letter that
7 employees of Rasky and Mercury were, in essence, part of the
8 VNA litigation team.

9 There's little doubt -- and now I turn to the -- to
10 what the court actually said in the Grand Canyon Skywalk case.
11 The court said, "There's little doubt that Scutari and
12 Cieslak" -- and those are the outside consultants -- "should
13 be treated as the functional equivalent of an employee of the
14 defendant or the client under the factors considered in the
15 many cases the court had looked at.

16 In its opposition to the motion to quash the
17 subpoena, Scutari and Cieslak indicated that they had been
18 hired by the tribe through their lawyers to protect the name
19 of the tribe and make it look more reasonable in the eyes of
20 the public.

21 They methodically walked through we'll call them S
22 and C. They had gone through every provision of contracts
23 that the tribe had with Canyon Skywalk Development. They had
24 focused on specific provisions and provided legal analysis
25 establishing who was responsible for a visitor center and

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1 certain portions of the litigation.

2 And they not only -- it was determined by the court
3 that they not only served as a gatekeeper to the tribe, but
4 also as the law firm that reviewed and approved the
5 communications and public relations agreement eventually
6 entered into between the tribe and a third party plaintiff.

7 So in that case, the consultant that's the third
8 party that stands in the shoes that Rasky and Mercury do here
9 was entire -- was used to review contracts and to determine
10 what the responsibility was of the actual party to the
11 litigation.

12 They undertook to provide general public relations
13 services beyond this legal dispute. And they provided
14 confidential legal communications with the lawyers on the
15 case. And there it was determined they were within the scope
16 of the attorney-client privilege. And their communications
17 were protected from disclosure. And there are a number of
18 other cases that were provided to me that I can go through.

19 But let me take a look at what the facts are that we
20 know right now about these 60 documents. And as I mentioned
21 earlier, they are generally copied to Rasky and/or Mercury.
22 And so I asked -- having read a whole variety of cases, I
23 asked VNA to file a copy of the contract with these two
24 entities so I could understand whether they had become
25 functional, whether they were seconded to or whatever word we

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1 want to use. Whether they had become integrated into VNA's
2 legal team, defending it in this litigation.

3 And although VNA could not locate a signed copy of
4 those contracts and, in fact, could not locate any contract
5 with Mercury -- and we'll set that aside for a minute.

6 With Rasky, VNA was able to locate an unsigned copy
7 of the contract that you believe is the effective contract.
8 So I'm just going to set aside for a moment the fact that it
9 was unsigned. I'm just not that concerned about that.
10 Because I trust that you would let me know if you didn't think
11 this had anything to do with the relationship between the
12 parties.

13 And the first thing I want to say about the contract
14 with Rasky is that it was signed and it was entered into after
15 the litigation that we're here talking about began. So at the
16 time you wrote this contract, you being VNA, with Rasky, you
17 knew you were facing litigation. It had been filed months
18 earlier in 2016. Yet there's no mention of the word
19 litigation in the contract anywhere.

20 So as I understand it, Rasky -- and I'm assuming that
21 because we don't have a contract for Mercury, I'll just assume
22 a similar type of contract or a type of oral agreement was
23 entered into with Mercury. And it's absolutely not for the
24 purposes of assisting in litigation, advising in litigation,
25 drafting litigation documents or anything of that nature.

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1 I also looked -- it also has a scope of work. And
2 there's going to be an hourly basis. It's going to be 250
3 dollars per hour or whatever else is agreed upon. And I think
4 ultimately there's a different fee here.

5 But in the scope of work, which I think is
6 critical -- when you look at all of the data breach litigation
7 and I think that -- I don't think either side pointed me to
8 too much of that litigation. But there's a really helpful
9 case out of the -- two or three helpful cases out of the
10 Eastern District of Virginia. And one of them is In re
11 Dominion Dental Service v Inc. Data Breach Litigation.

12 The reason this type of litigation is helpful is
13 because when a company has a data breach, they hire a forensic
14 expert. They often hire a PR company so that the public knows
15 target. I read the Target litigation, the Experian data
16 breach litigation.

17 And then the issue becomes were the communications
18 with those third parties protected or not. And what the
19 courts look to in every instance is the scope of work. What
20 were these consultants there to do? And here the program name
21 is Flint Crisis Work and Proactive PR Support.

22 So there's nothing related to litigation there. The
23 program overview, PR support related to the Flint media
24 crisis. So here it's clear it's not the Flint litigation
25 crisis. It's the media crisis that understandably your client

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1 is concerned about its public reputation during this time
2 period. So it says program overview is about the media
3 crisis, ongoing media relations support for proactive
4 visibility efforts.

5 So these two media companies are going to help VNA be
6 proactive, move forward with a positive image. The scope of
7 work says crisis PR counsel in support related to Flint, media
8 relations, and content and message development. It starts
9 September 1 of 2016 and can continue as needed. And there's a
10 retainer and then had the hourly fee.

11 So the question becomes whether these employees,
12 despite the scope of work -- I'm willing to go beyond what
13 Dominion Dental Services instructs -- and that's
14 429 F.Supp.3d 190 -- and all of those cases to just let's look
15 at reality.

16 And here the nature of the litigation is about the
17 engineering services, a professional negligence case relating
18 to engineering services that related to water chemistry.

19 The Rasky and Mercury companies are not engineers.
20 They're not water professionals. And they never represented
21 VNA at a substantive meeting about what its water consulting
22 or engineering work had included. And there is nothing in the
23 statement of work that otherwise indicates they're serving as
24 a paralegal or consulting or legal strategy.

25 In some instances, they were told about we have three

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1 options in one for how to respond to a judge's ruling on a
2 pending motion. If we win, let's go with this statement. If
3 we lose, let's go with this statement. And then let's have a
4 proactive -- you know things of that nature. But it's not in
5 no way were those media companies analyzing the pending
6 litigation to advise VNA on whether you're likely to win or
7 lose or some third thing, whatever that might be.

8 So I do not see anything in what's before me that
9 would indicate that these companies had become integrated into
10 VNA and were, in essence, working there.

11 The other thing that I've looked at is In re Signet
12 Jewelers Limited Securities Litigation. And he let me tell
13 you a little bit about that. Because it comes out the
14 opposite of the Copper Litigation. It's another Southern
15 District of New York case, 2019. Quite current.

16 The corporation there had hired two PR firms. That's
17 similar. Following the publication of articles accusing the
18 corporation of fraud. There's no fraud allegation, but
19 negligence is the allegation here. That counsel retained
20 these PR firms while the corporation faced, quote, a series of
21 media crises that plagued the company for several years.

22 Then Signet's management along with its in-house and
23 outside counsel and PR firms, quote, formed a strategic
24 communication strategy committee which convened to discuss
25 communications strategy to neutralize the climate of negative

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1 and often inaccurate media coverage in light of the legal and
2 reputational risks facing the company. And plaintiff moved to
3 compel those documents in the same manner as plaintiffs have
4 here.

5 The court conducted an in camera review of certain
6 exhibits containing various emails as well as the privilege
7 logs. And after reviewing those communications, the court
8 held that, quote, "Nothing in the client's communications for
9 the former purpose constitutes the obtaining of advice or
10 justifies a privileged status." The court mentioned that it
11 looked at -- it would have merited a privilege status if a PR
12 employee had been the functional equivalent of a Signet
13 employee.

14 Here VNA has a robust I think it's a vice president
15 level communications department. Or two, if the PR firm had
16 been hired to perform a specific -- quote, specific litigation
17 task that the attorneys needed to accomplish in order to
18 advance their litigation. And -- or if they had conducted a
19 media campaign in an effort to paint the target in a favorable
20 light so that the prosecutors -- this is related to a case the
21 court cited about grand jury subpoenas might feel less
22 pressure to indict.

23 But here, Rasky and Mercury are not trying to
24 influence the Court in what they're doing like the PR firm in
25 grand jury case. They're trying to influence the public's

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1 view of your client VNA.

2 So and because there in the Signet case, the court
3 reasoned that the PR firm did not fit into those categories
4 that the defendant had relied on and the documents were not
5 sent to or shared for the purpose of giving or obtaining legal
6 advice and, therefore, were not privileged.

7 So let me take a look at where that leaves us. I
8 having looked at all of these documents with respect to 40 of
9 the 60 documents that were provided to me, VNA I find has
10 failed to meet its burden of showing that those documents were
11 either privileged in the first instance.

12 Because what the problem is as I read the documents,
13 a great many of those 40 documents are created for the purpose
14 of seeking -- or they're communicated with Mercury and Rasky
15 for the purpose of a media campaign and not related to the
16 litigation. Now certainly the media campaign was desirable
17 because of ongoing litigation, but that didn't mean that
18 Mercury and Rasky were involved in the litigation.

19 So and let me -- so in the first instance, I don't
20 think those work product privileged documents were ever work
21 product. And in the second instance with respect to the
22 attorney-client privilege, to the extent that VNA lawyers in
23 some instances and communication director copied Mercury and
24 Rasky, I think they waived the privilege.

25 That was not inadvertent. It's very clear in the

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1 email that they want Mercury and Rasky's expertise and
2 finessing the public message.

3 Now of the 20, I just want to make we're kind of
4 clear on what's going on here. Of the 20 that I think are
5 privileged, 17 of those originated from VNA's selection and
6 three from plaintiffs' counsel. If you're just sort of
7 keeping track of that level of detail.

8 And so what I think we need to do now is this is
9 essentially the decision that I've been able to make having
10 done the research, reviewed the documents, and sorted out who
11 all of the people are who are copied on the documents.

12 So what I would ask VNA to do is understand that the
13 rule that I'm announcing to you at this point is that the
14 documents that are part of a media campaign simply aren't
15 privileged. Those need to be turned over of your 1,700.
16 Documents that are copied from in-house counsel or others to
17 Mercury and Rasky, the privilege is waived.

18 And what I could do is ask you to turn those
19 documents over in a reasonable -- there's a lot -- 1,700 is a
20 lot. So I'll give you some time to go through those. If you
21 think you would like the assistance of further in camera
22 review of the 1,600, whatever we've got, 30 left, I would
23 appoint -- I have some ideas about this.

24 I would appoint either Deborah Greenspan or I've
25 already appointed Mona Majzoub for the purpose -- former

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1 Magistrate Judge Mona Majzoub for the purposes of working on
2 settlement issues. She served our court as a hardworking
3 magistrate, looked at attorney-client privileged issues
4 constantly, and could jump in and work on this.

5 So I want to give you a chance to think about that
6 and see whether you think you need that assistance. If we did
7 employ or use Special Master either Deborah and Mona Majzoub
8 or one or the other, I would require that VNA cover two thirds
9 of the cost of that and plaintiffs' counsel one third. And I
10 base that only on the fact that 40 out of 60, two thirds of
11 the documents were not privileged in the first place or the
12 privilege was clearly waived.

13 I don't think this is a close call from my
14 perspective. So it just seems fair that the plaintiffs
15 shouldn't bear a 50/50 percent of that cost if a special
16 master is needed.

17 So Mr. Olsen, how much -- how do you -- do you want
18 to take the first crack?

19 MR. OLSEN: Can I make a couple of comments? The
20 answer to your question will be yes, but a couple of comments.

21 With all due respect, Your Honor, I think you're
22 applying an extremely narrow reading of this issue that's not
23 consistent with the case law. With respect to the functional
24 equivalence test, I certainly agree that's what most courts
25 use in evaluating this question. But the courts are not

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1 making that decision based on whether you have no PR
2 capabilities in the U.S., like you said in Sumitomo. Or
3 whether there's no one who could provide that assistance.

4 I mean, if you look at GSK, which is one of the
5 leading cases in this, FPC v GSK.

6 THE COURT: I did.

7 MR. OLSEN: The way they describe it is the way most
8 of these cases describe it, which is are the third parties
9 working in the same manner as they did with full-time
10 employees. Are they part of the team and working with
11 full-time PR employees in a similar way?

12 I don't think there's any way that you could conclude
13 that that isn't the case here where these third party PR
14 consultants were working in a very similar way as the
15 full-time PR people were working.

16 And the other point you made with respect to the fact
17 that these are PR people doing PR things and not providing or
18 assisting with providing legal advice in particular, I also
19 don't think that's at all the standard in this case law.

20 If you look at Sumitomo, which you talked about, or
21 In re Copper Antitrust Litigation, when you hire a PR firm to
22 do PR things, to deal with public relations problems following
23 the exposure of a scandal that gave rise to that very same
24 litigation, that court concluded when they're doing PR things,
25 not legal things, that there is no waiver when they're

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1 consulting with lawyers to help understand those legal issues,
2 which is exactly the same thing that happened here.

3 Certainly these PR firms were hired to do PR things,
4 but that doesn't mean that there's a waiver or there was no
5 purpose with respect to a legal issue and it was fundamentally
6 a media campaign. They clearly, if you look at those
7 documents that reviewed in camera, were working in connection
8 with the lawyers to understand the litigation and providing --
9 and working with those lawyers with respect to work product
10 and legal advice.

11 Having said that, I understand your direction. And
12 yes, I think we need a little time to evaluate the implication
13 of this. There are a couple of issues. For example, the in
14 camera review documents you looked at were from 2016 and 2017.
15 There was a very -- a much more recent production of 2019
16 documents that relate to the guardian article, for example,
17 where I think the issues may be different with respect to a PR
18 firm.

19 But yeah, we need to go through and evaluate how many
20 of those 1,700 documents did copy PR firms on them and
21 evaluate whether we need additional guidance or help. And we
22 take your suggestions and we will get back to you as soon as
23 we can get through those voluminous documents with respect to
24 what we think the next step should be.

25 THE COURT: Okay. How much time do you need to get

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1 back to me?

2 MR. OLSEN: Can we have three weeks?

3 THE COURT: Yeah. And then what I would ask is that
4 you have a meet and confer with Mr. Stern and Ms. Daly so that
5 when you get back to the Court in three weeks, I would know
6 what your plan is for producing the documents and whether you
7 need the assistance of a third party.

8 And if so, who you recommend that that third party
9 be. Aside from myself, which I don't think you would be
10 recommending anyway. I don't think you're satisfied with the
11 outcome that's been reached so far. So and I just don't have
12 the time to go through all of those.

13 So what -- so if you can get all of that done in the
14 next three weeks, that would be very good. Where are we?
15 Today is the 19th. So we're talking about August 9th.

16 MR. OLSEN: Okay.

17 THE COURT: Okay. Good.

18 MR. OLSEN: Your Honor, that isn't all of the issues
19 with respect to item 4. I think --

20 THE COURT: Oh, okay. What else -- right.

21 MR. OLSEN: We should probably talk about -- and
22 Ms. Daly can disagree, but I don't think she will. With
23 respect to the PR --

24 THE COURT: Well, let me just see whether Ms. Daly
25 and Mr. Stern have anything to say about the three-week period

1 and this process that I've proposed.

2 MR. STERN: Your Honor, I don't have any issue -- we
3 don't have any issue with the three weeks. The process makes
4 sense. But I just would like a little bit of time to digest.
5 You gave a very thorough ruling orally. And you know, I just
6 would like a little time to digest it. I can't think of
7 anything instinctively or off the top of my head that is jumping
8 out at me about it. But we appreciate the thoroughness that
9 the Court -- with which the Court conducted this evaluation.

10 And within the next three weeks, but certainly sooner
11 if there are any issues with the process described, we'll be
12 sure to let the Court know. And Ms. Daly may have -- you
13 know, she may have thoughts from having heard this that I
14 didn't have, so.

15 THE COURT: And let me add one thing that looking
16 back at my notes, the factors for the functional equivalent
17 that I had -- that I was reviewing when I was discussing the
18 Copper Litigation actually come from the Bieter case,
19 B-i-e-t-e-r, which the Copper Litigation court relied upon.
20 And that's B-i-e-t-e-r, 16 F.3d 929.

21 MR. STERN: Your Honor, one thing that does jump --
22 thank you. One thing that does jump out to me in -- to the
23 extent you've already reviewed 60 documents and have made a
24 decision on 40 of them, that they are not privileged --

25 THE COURT: Or made a decision on all 20 of them -- I

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1 mean, all 60 of them.

2 MR. STERN: Right.

3 THE COURT: Twenty of them were I think were
4 legitimately withheld as privileged.

5 MR. STERN: Sure. I'm curious about whether we can
6 now have those 40 since that would not require another review
7 by anybody since -- because we haven't seen any of these
8 documents.

9 THE COURT: Right.

10 MR. STERN: And the fact that 17 out of the 20 that
11 were privileged came from VNA, I may have some thoughts about
12 the division of payment to a special master. But
13 notwithstanding any of that, you know, can we get the 40
14 immediately that have been submitted to the Court that Your
15 Honor has ruled are not privileged or protected in another
16 way?

17 THE COURT: Sure. I don't have any problem with
18 that.

19 MR. STERN: Thank you.

20 THE COURT: I'll just need to put it in an orderly
21 non scribbled fashion.

22 MR. STERN: Understood.

23 THE COURT: So we'll get it to you.

24 MR. STERN: No problem. Thank you.

25 THE COURT: I mean, I'll get the list to Mr. Olsen

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1 and he'll produce the documents to you.

2 MR. STERN: Okay. Thank you.

3 MS. DALY: Your Honor --

4 MR. OLSEN: So the only thing I was going to say is
5 with respect to this plaintiffs' fourth amended RP topic and
6 the PR discovery topic, and I take the privilege issue is
7 going to take some further time as you've just outlined. But
8 other than that, I think we all agree based on the meet and
9 confer yesterday that there is no additional data or
10 information that plaintiffs are looking for with respect to
11 these issues.

12 And on the May 17 conference, you had suggested that
13 time had come for plaintiffs to demonstrate what they think
14 they've learned from these months and months and months of
15 discovery. And whether there's anything they think is here
16 with respect to targeting jurors. And what the Court should
17 do about it if they think so.

18 Obviously you've heard from me before. I have a
19 fundamentally different view. And I think all of this
20 discovery has demonstrated that not only was the Detroit News
21 article wrong, but there was absolutely no targeting.

22 But given that, I think we're in the same place with
23 respect to there are no outstanding document or data issues
24 with respect to this issue except for the PR stuff, which we
25 will proceed as you just directed, I think it's time for you

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1 to set a deadline for Mr. Stern and Ms. Daly to get you
2 whatever their expert affidavit or whatever they want to
3 submit that outlines what their findings are. Because this
4 should be over in terms of this PR discovery endeavor.

5 And I don't know if you want to hear about
6 Ms. Flotteron's deposition today. That's another Actum
7 deponent that Mr. Stern has noticed up. Now she doesn't have
8 any firsthand knowledge about the Flint Water Crisis. Her
9 role was to watch the trial on Zoom and compose Tweets that
10 were posted to the Flint Facts Twitter account.

11 And Mr. McKeon was already deposed about those
12 issues. And that deposition often strayed into a debate or an
13 argument about the merits of what was in the Tweets
14 substantively and what should or should not have been said,
15 which obviously doesn't have anything to do with whether or
16 not there was any targeting here.

17 So we don't think this should keep going absent what
18 you directed in May, which is plaintiffs' counsel showing or
19 making a showing as to what they've learned here so that you
20 can evaluate whether this should go any farther.

21 MR. STERN: May I respond, Your Honor?

22 THE COURT: Yes.

23 MR. STERN: I always appreciate Mr. Olsen's advocacy.
24 I disagree with everything that he just said.

25 I disagree with the characterization of what Your

1 Honor said at the last hearing. I disagree with his
2 description of what a witness that he doesn't represent may
3 say or what her knowledge is. They don't have standing under
4 the law to object to this deposition.

5 We've met and conferred with her attorney who appears
6 willing to produce her for a deposition under certain caveats
7 and scope of the deposition. I have a completely different
8 reading of having taken Mr. McKeon's deposition about what
9 this witness will testify about.

10 And the Twitter issue and the Dynamic ads issue and
11 all of those issues, while they are interrelated, they are not
12 exclusive of one another.

13 Your Honor asked during the trial if any of the
14 lawyers at trial knew about that Twitter account. You asked
15 right in front of me. I raised it. It was very spontaneous.
16 And every one of them said no. And yet we found out during
17 the deposition of Mr. McKeon that there were lawyers from at
18 least Mayer Brown who were integrally involved in providing
19 information to Actum to help produce the Tweets that were
20 being put out during the trial.

21 Mr. McKeon was a supervisor. He was essentially the
22 manager of the team. But he didn't remember a single Tweet
23 that he had composed himself or where the information had come
24 from. And what we will ultimately be seeking as a result of
25 all of this primarily is prospective relief.

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1 Mr. Leopold and Mr. Novak have a trial starting in
2 February along with Veolia. To the extent that there was
3 anything that happened during the first bellwether trial that
4 the Court may find to not have been appropriate, it shouldn't
5 happen again in the next trial and it shouldn't happen in the
6 trial after that.

7 Notwithstanding that, we need some time -- they just
8 produced this morning the final tranche of documents that our
9 expert asked for with regard to doing a full accounting and
10 evaluation of what happened with the Dynamic ads.

11 Literally three hours ago, we got the production,
12 which is password protected, and we immediately sent it to
13 him. So to say the time has come for us to show our cards and
14 to turn over our hand, maybe. Probably. But we should at
15 least have, first, the opportunity to review the most new
16 tranche of documents that just came our way this morning with
17 that regard.

18 Your Honor's had the affidavit of their expert for
19 two months now and have not seen anything yet from our expert.
20 So we'd like the opportunity for him to look at those
21 documents. We would like to provide a declaration or an
22 affidavit from him to the extent he thinks that anything was
23 done was actually done inappropriately or with the purpose of
24 targeting jurors or the public at large.

25 So if three weeks was enough time to review the

1 issues associated with the privilege log, we'd ask for the
2 same amount of time for our expert to at least review the new
3 documents that came in. We're happy to at that point in time
4 provide Your Honor with a report from him or an affidavit from
5 him to the extent that he has an opinion that differs from
6 Veolia's expert's opinion.

7 Again, I've never once said in one of these hearings,
8 in writing, anywhere, that Veolia tried to manipulate jurors
9 and the trial was subverted by that process. I read an
10 article that I had no role in from the Detroit News that was
11 well --

12 THE COURT: I understand.

13 MR. STERN: So that's why we are with that. So those
14 are two issues. There's the Twitter issue and then there's
15 the Dynamic ads issue.

16 Now, if I may, there is an interplay between the
17 Twitter account and Dynamic ads. And so they are obviously
18 related. But for the next trial, if there are lawyers
19 participating in a Twitter account that's providing
20 information to the public that's false, that may be something
21 that we seek the Court's intervention on. If there's a
22 Dynamic ads campaign that's either related to or independent
23 from --

24 THE COURT: Okay.

25 MR. STERN: Yeah.

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1 THE COURT: Good.

2 MR. LEOPOLD: Your Honor?

3 THE COURT: Yes.

4 MR. LEOPOLD: I don't mean to weigh into all of this
5 because I know it's been primarily the personal injury case,
6 bellwether case that Mr. Stern tried along with the
7 defendants. But I must say that what Mr. Stern said a moment
8 ago --

9 THE COURT: I don't know -- okay.

10 MR. LEOPOLD: I'm sorry?

11 THE COURT: When you said the personal injury, you
12 mean -- I understood but --

13 MR. LEOPOLD: The bellwether individual cases --

14 THE COURT: Yeah.

15 MR. LEOPOLD: -- that he tried where these issues,
16 you know, arose. But what Mr. Stern said I think is very
17 important that moving forward for the next trials, not only
18 the information that has been discussed here today but just
19 looking still to this day, you know, they have these websites
20 up trying to hit the community that are extremely misleading
21 and are misquoting you, others. I just think these are issues
22 that have to be addressed.

23 We're going to have to address them with the jury to
24 make sure that none of the jurors look at these websites that
25 are so misleading about, you know, lawyers -- bad lawyers in

1 this case and stealing the client's monies. It's just very
2 bad things. We have to address them at some point in time.

3 THE COURT: Well, the only way that I address things
4 is when a motion is brought to me. When an issue is
5 identified by a lawyer through a formal process of either
6 getting it on an agenda. But ideally, I can't just in -- writ
7 large I can't just say, okay, everybody say nice things about
8 everybody. I can't do that. So what --

9 MR. LEOPOLD: No. We're past that stage, Your Honor.
10 But I do think we can raise it with a motion. But all of
11 these issues are intertwined.

12 THE COURT: Of course they are.

13 MR. LEOPOLD: And they've been talked about for
14 months.

15 THE COURT: But bring to my attention what are the
16 communications, who's making them, when are they -- where are
17 they, when are they. Just tell me more. That's all I'm
18 asking you to do.

19 MR. OLSEN: Your Honor, I don't think we -- I agree
20 with Mr. Stern. There's no reason we need to debate these
21 issues. All I was asking for is what you were asking for in
22 May.

23 THE COURT: Right.

24 MR. OLSEN: Which he suggested he will do.

25 THE COURT: Exactly.

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1 MR. OLSEN: Which is if we're getting an expert
2 affidavit or a statement or whatever, let's get it. That's
3 all I'm saying.

4 THE COURT: Good.

5 MR. STERN: So if I may? What I anticipate doing,
6 Your Honor, is providing that affidavit and I believe it would
7 be followed with a motion to the -- I don't know what the
8 affidavit's going to say.

9 THE COURT: Right.

10 MR. STERN: So I can't tell you that I'm seeking
11 relief if nothing happened. But I'd like to have the
12 opportunity to work with the expert to get his opinion. If
13 there is an opinion that supports anything from that article
14 or anything that we believe now may have happened, that we
15 then have the opportunity to seek relief from the court,
16 primarily prospectively and perhaps retroactively depending on
17 what he says.

18 But again, I'm operating under the assumption that
19 everything that has happened has been above board and with the
20 hope that our expert comes to me and says nothing happened
21 here. This was a wild goose chase. You shouldn't have gone
22 on it. I'm sorry you had to pay me money. I'm glad I had the
23 opportunity to review it, but nothing happened. Nothing would
24 make me happier than to hear that. I swear to -- I swear on
25 everything holy.

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1 THE COURT: Good. Okay. So what we'll do, this is a
2 good plan then. In three weeks on this issue, Mr. Stern and
3 Ms. Daly will provide a summary of what your discovery has
4 shown so far with respect to the Dynamic search ad, alleged
5 campaign, Twitter and all of those issues. If there is
6 something you think you still need and anything that your
7 expert can say so far that would convince me that this is
8 worth continuing to pursue.

9 And then if you have a motion, because you now have
10 an expert who can say something, I don't know, is that enough
11 time for your expert -- for you to draft your motion?

12 MR. STERN: I think we probably need at least two
13 weeks once we get the report from our expert.

14 THE COURT: Yeah.

15 MR. STERN: And it may be that we can meet and confer
16 with Veolia and tell them what the report says and they may
17 agree to the relief that we would ultimately seek in a motion
18 and there might not be a need for a motion.

19 THE COURT: Yeah. Okay.

20 MR. STERN: And with regard to Ms. Flotteron's
21 deposition, I firmly believe that it's necessary. I don't
22 think Veolia has standing. Her lawyer seems willing to
23 produce her. It's a very limited scope. And it's probably
24 the last deposition that I will have to take or we will have
25 to take related to the Twitter issue.

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1 Because as you might recall, we were first told that
2 it was Pierre Farcot in France. And then we were told that it
3 wasn't him. And then we were told that it mate may have been
4 someone named Jennifer, and it wasn't that person.

5 So now we know exactly who sat at a computer and on
6 their phone and typed these Tweets. No one that we have
7 talked to yet has done that. This is probably the last
8 deponent that we would have to take to get to the bottom of
9 the Twitter account, which is part and parcel with what we
10 might ask for relief for going forward.

11 And obviously if her attorney wants to move to quash
12 the --

13 THE COURT: And when is her deposition scheduled for?

14 MR. STERN: It's August 5, I think. Melanie, is that
15 right?

16 MS. DALY: That's close. August 8th and 9th now.

17 MR. STERN: August 8th, yeah.

18 THE COURT: Okay. And I got an email from Ms. Devine
19 related to this. Mr. Olsen, are you addressing it?

20 MR. OLSEN: I'm not sure what the email is. All I
21 know is we had a brief communication with her lawyer when they
22 were evaluating whether or not to move to quash that
23 deposition. I don't know if they will or they won't. This is
24 beyond the pale in terms of cumulative of all these issues
25 we've been dealing with for months and months and months. I

1 certainly wouldn't want this to be an excuse to delay the
2 process you just outlined for getting a submission on what
3 plaintiffs think they found here, if anything. And if --

4 THE COURT: You're the first person CC'd on the
5 email.

6 MR. OLSEN: Oh, I just don't know which email you're
7 talking about.

8 THE COURT: Oh, okay. I'm talking about Ms. Devine's
9 email to Leslie Calhoun trying to get me to address it.

10 MR. OLSEN: Where Ms. Devine suggested that that
11 shouldn't go forward. I've already articulated that position
12 today.

13 THE COURT: Okay.

14 MR. OLSEN: I don't know if Actum's counsel or -- she
15 doesn't work at Actum anymore. Whether her counsel's going to
16 move to quash or not. I don't think absent the process you
17 just described, I would think see what Mr. Stern's expert and
18 Mr. Stern and Ms. Daly have to say and then you can evaluate
19 whether this dep is necessary.

20 MR. STERN: Except the problem is --

21 THE COURT: If Flotteron -- wait, how do we say her
22 name?

23 MR. STERN: Flotteron.

24 THE COURT: Flotteron. If Flotteron isn't moving to
25 quash the subpoena for the deposition, let's just get it done.

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1 Then in three weeks we're going to find out whether we go any
2 further with this subject. And then that will be that.

3 MR. STERN: Thank you, Judge.

4 THE COURT: And Mr. Leopold, if on behalf of class
5 plaintiffs you want to file -- make a filing or make a
6 recommendation regarding media leading up to or statements
7 leading up to the trial or during the trial, this next
8 three-week period would be a good time for you to get that in
9 as well unless something comes to your attention after that.

10 MR. LEOPOLD: I appreciate that, Your Honor. It is a
11 little bit -- as you can appreciate, a little bit different
12 dealing with the class issues because communicating with class
13 members is different than others. But we will look at that
14 issue and perhaps file a motion.

15 THE COURT: Yeah, it's different in terms of
16 plaintiffs' responsibility. But I think the defendants, do
17 they -- they have the same --

18 MR. LEOPOLD: Can't communicate with the class
19 members, Your Honor.

20 THE COURT: No. Of course not. But they can -- they
21 can communicate in the world about --

22 MR. LEOPOLD: Yeah. That's --

23 THE COURT: -- the existence of their company or
24 something like that.

25 MR. LEOPOLD: Certainly, yes. But I understand what

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1 you're saying. I think we're on the same wavelength. What
2 they say, so long as it's hopefully accurate and appropriate.
3 What I see thus far has been a little bit out of the box. But
4 we'll address the issue.

5 THE COURT: Okay.

6 MR. LEOPOLD: There's a lot of cases dealing with
7 these issues on class matters.

8 THE COURT: Good. Good. Okay.

9 I did get an email regarding I think the July 25 slot
10 for a discovery conference regarding Veolia's response to
11 plaintiffs' fifth request for production of documents and
12 accompanying privilege assertions.

13 MR. STERN: We have not yet conferred about it.

14 THE COURT: Oh.

15 MR. STERN: It wouldn't be right for you to talk now
16 -- for us -- obviously you should talk about whatever you
17 want. But I don't think there's been an opportunity for us to
18 confer about it.

19 This ruling today may actually have implications on
20 those objections that we've now, you know, raised with Veolia.
21 So we're committed to continuing to work with them in light of
22 the Court's ruling and even prior to the Court's ruling to see
23 if there's a way that we can resolve it.

24 And we can let the Court know prior to -- I guess
25 it's a week from -- I guess it's a week from now. But we have

1 not yet heard back from them regarding our communications
2 about the -- our perceived insufficiencies in their most
3 recent privilege log.

4 THE COURT: Can you let us know before Monday? I'm
5 just trying to schedule.

6 MR. STERN: We're happy to let you know. I would
7 just ask that if it's possible for the Veolia counsel to get
8 back with us, you know, sometime before noon Monday for a meet
9 and confer so we can make a determination about what the
10 position is there, then we'd be able to let the Court know.
11 But as of now, we believe the ball is in the Veolia's
12 defendant's court, so to speak.

13 MR. OLSEN: That's fine, Your Honor.

14 THE COURT: Okay. Thank you. All right.

15 Well, thanks very much. And I'm not sure if I'll see
16 you on the 25th. But the next conference is when, Leslie?
17 It's not on a Wednesday I think.

18 MR. STERN: I think it's Tuesday. The 25th is a
19 Tuesday if that's what you're referring to.

20 THE COURT: Yeah, that one. But what's the next
21 August?

22 THE CLERK: Oh, we still are looking at the calendar
23 for August.

24 THE COURT: What was that Leslie?

25 THE CLERK: I said we need to still look at the

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1 calendar.

2 THE COURT: Oh, no wonder I can't find it. Okay.
3 Good. We'll do that.

4 Thank you everyone. Take care.

5 (Proceedings Concluded)

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8 CERTIFICATE OF OFFICIAL COURT REPORTER

9 I, Jeseca C. Eddington, Federal Official Court
10 Reporter, do hereby certify the foregoing 50 pages are a true
11 and correct transcript of the above entitled proceedings.

12 /s/ JESECA C. EDDINGTON
13 Jeseca C. Eddington, RDR, RMR, CRR, FCRR

07/25/2023
Date

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